



IN THE HIGH COURT OF SOUTH AFRICA
(BOPHUTHATSWANA PROVINCIAL DIVISION)

CASE NO: CA 47/08

In the matter between:

MOEKETSI MABEBA

Appellant

and

THE STATE

Respondent

CRIMINAL APPEAL

HENDRICKS J; SIBEKO AJ

DATE OF HEARING : 27 FEBRUARY 2009

DATE OF JUDGMENT: 05 MARCH 2009

COUNSEL FOR THE APPELLANT : MRS KHWINANA

COUNSEL FOR THE RESPONDENT: ADV MUNERI

JUDGMENT

HENDRICKS J

- [1] The Appellant, Mr Mooketsi Mabena, was convicted in the Regional Court for theft of a motor vehicle and was sentenced to an effective term of imprisonment of five (5) years. He appeals against both the conviction and the sentence imposed on him.

[A] Ad Conviction:-

- [2] This case clearly evolves around circumstantial evidence that was presented on behalf of the State. The evidence can be succinctly summarized as follows:-
- [3] Mr Steve Maimela is the owner of a red Ford Laser which was stolen on the 17th day of April 2006, in Pretoria Central where he resides. He reported the matter to the police. The said motor vehicle was discovered on the 19th April 2006 on premises at Block A, Mabopane in Pretoria by Inspectors Moja and Sebigi following information they received about the said motor vehicle.
- [4] When Moja and Sebigi entered the premises upon which the said motor vehicle was parked behind the house, they found that the motor vehicle was standing next to a white Mazda motor vehicle and jumper cables were connected between the two motor vehicles.

- [5] The registration plates (number plates) and license disc of the Ford Laser motor vehicle were removed and the ignition was tampered with. The Appellant was found seated behind the steering wheel of the motor vehicle busy trying to get it started.
- [6] Upon being confronted by the two police officers, he could not give any plausible explanation as to why he was in possession of the said motor vehicle which was in such a condition. The motor vehicle was impounded and taken to the police station where-after the owner, Mr Maimela, positively identified it as his motor vehicle to Modise, a police officer.
- [7] In contrast to the version presented on behalf of the State, the Appellant testified and confirmed that he went to the said premises on the day in question in an attempt to get his DVD's from a certain Lucky. He parked his motor vehicle in front of the house. After the conversation between him and Lucky, Lucky requested him to wait as he (Lucky) was going to fetch the DVD's.
- [8] Whilst being seated inside his car (the Mazda), the police arrived and asked him what he was doing. He conveyed to them what he was doing, which prompted the police to knock on the door of the house. Upon being asked who the owner of the Ford Laser motor vehicle was, he told them that he knows nothing about the said motor vehicle.

[9] After knocking on the door of the house, two boys emerged – one ran away and the other one was left on the premises after being questioned by the police. He was then arrested and the motor vehicle impounded.

[10] Lucky Makinta was called as a witness by the defence. He corroborated the version of the Appellant that the Appellant paid him a visit on the day in question and requested some DVD's. He left the Appellant at his premises and went to look for the DVD's. Apart from the fact that the provisions of Section 309 of the Criminal Procedure Act were not strictly adhered to, this witness could not explain how the said motor vehicle got onto the premises or who the owner thereof was. That is as far as he could take it because when the Appellant was arrested, he was not there. In his testimony he tried to create some doubt by stating that there were four other occupants living on the said premises. Not much really evolves around this.

[11] The learned Regional Magistrate correctly evaluated the evidence that was presented on behalf of both the State and the defence. He also made strong credibility findings against the Appellant and his witness, which cannot be faulted. Having regard also to the probabilities, he quite correctly found that the version of the Appellant that he only sat in his Mazda motor vehicle in front of the premises of the said Lucky and being arrested by the police for no apparent reason to be highly improbable.

[12] Furthermore, it is also highly improbable that the police, who got hold of one of the boys who emerged from the house, on the Appellant's version, would leave him behind and rather arrest the Appellant who was seated in a motor vehicle in front of the premises and who was not even in control of the premises.

[13] The learned Regional Magistrate, correctly in my view, applied the doctrine of recent possession, and came to the conclusion, which is the only reasonable conclusion that he could have come to on the circumstantial evidence presented, that the Appellant stole the said motor vehicle on the 17th April 2006 seeing that he was found to be in possession thereof on the 19th April 2006, whilst trying to start it; the number (registration) plate and license disc being removed and the ignition being tampered with. The inference of guilt on the charge of theft is therefore consistent with all the proven facts. The proven facts exclude every other reasonable inference save for the one to be drawn. The appeal against conviction should therefore fail.

[B] Ad Sentence:-

[14] The Appellant alleges that the learned Regional Magistrate misdirected himself by overemphasizing the seriousness of the offence and the interests of society and, by necessary implication, underemphasized his personal circumstances.

[15] In his judgment on sentence, the Regional Magistrate mentioned that amongst others, the personal circumstances of the Appellant were indeed taken into consideration though he did not repeat them *verbatim*.

[16] No judgment can however be all inclusive. The fact that the learned Regional Magistrate did not itemize the personal circumstances of the Appellant does not necessarily mean that they were overlooked. Considering all the relevant facts and circumstances, the sentence imposed is indeed a fit and proper sentence and surely not unreasonable or disproportionate to the crime, its prevalence and the personal circumstances of the accused. Therefore, in my view, the appeal against sentence should also fail.

Order:-

Consequently, I make the following order:-

The appeal against both the conviction and the sentence is dismissed.

R D HENDRICKS
JUDGE OF THE HIGH COURT

I agree.

L T SIBEKO
ACTING JUDGE OF THE HIGH COURT

ATTORNEYS FOR THE APPELLANT: MTINKULU-KHWINANA
ATTORNEYS